



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604

OCT 17 2005

MEMORANDUM

SUBJECT: Notification of Intent to Establishment of a Special Account
Ellsworth Industrial Park Site, Downers Grove, IL

FROM: Wendy L. Carney, Branch Chief
Remedial Response Branch #1

THRU: Matthew Mankowski, Section Chief
Remedial Response Section #2

TO: Melissa Franolich
Office of Site Remediation Enforcement

Tom DeHoff
Financial Management Division

This memorandum serves to notify your office that EPA Region 5 requests to establish a Superfund Special Account for the Ellsworth Industrial Park site (SA1), located in Downers Grove, IL. Payments are to be made by the settling Respondents to fund performance of Remedial Investigation/Feasibility Study work by U.S. EPA. Those funds should therefore be placed into a site-specific special account to be used for that work, rather than the Superfund Trust Fund.

On September 29, 2005, EPA signed an Administrative Settlement Agreement and Order with 17 potentially responsible parties. A copy of the settlement is attached. Under the settlement, Respondents will make an initial payment of \$60,000 into the special account for use by U.S. EPA to prepare an RI/FS work plan and other related documents. Upon U.S. EPA's completion of the RI/FS work plan and other planning documents, the Respondents have 10 days to decide whether to perform the rest of the RI/FS themselves. Unless the Respondents elect to do the work, they must pay an additional \$500,000 into the special account within 10 days after the deadline for the Respondents' election. The settlement payments are to meet the Respondents' obligation to perform or fund the RI/FS for the Site.

If you have any questions regarding this request, please contact Thomas Krueger, Associate Regional Counsel, at (312) 886-0562, or Mazin Enwiya, Remedial Project Manager, at (312) 353-8414.

EPA Region 5 Records Ctr.



265605

cc Thomas Marks SR-6J
William Bolen SR-6J
Linda Haile MF-10J

bcc: Mazin Enwiya SR-6J
Thomas Krueger C-14J ✓

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

**ELLSWORTH INDUSTRIAL PARK SITE
DOWNERS GROVE, ILLINOIS**

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER
PURSUANT TO
SECTIONS 104, 107 AND 122 OF CERCLA**

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No.	V-W- '05-C-827
)		
ELLSWORTH INDUSTRIAL PARK SITE)	ADMINISTRATIVE SETTLEMENT	
)	AGREEMENT AND ORDER	
DOWNERS GROVE, ILLINOIS)	PURSUANT TO SECTIONS	
)	104, 107 & 122 OF THE	
)	COMPREHENSIVE ENVIRONMENTAL	
Respondents:)	RESPONSE, COMPENSATION, AND	
)	LIABILITY ACT, as amended,	
Listed in Attachment A)	42 U.S.C. §§ 9604, 9607 and	
)	9622	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order (the "Settlement Agreement and Order") is entered voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and the Respondents. The Settlement Agreement and Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

2. This Settlement Agreement and Order provides for the Respondents' funding and U.S. EPA's performance of certain response actions related to the conduct of a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the industrial park portion of the Ellsworth Industrial Park Site in Downers Grove, Illinois (the "Site"), which is generally depicted in Attachment B, and to develop and evaluate potential remedial alternatives. The RI/FS will evaluate response actions consistent with 40 CFR Part 300.430, to address the environmental concerns in connection with the areas of contamination located within and surrounding the industrial park portion of the Site. Remedial action(s) selected through the RI/FS process will be implemented pursuant to a Record of Decision to be issued by U.S. EPA.

3. A copy of this Settlement Agreement and Order will also be provided to the State of Illinois, which has been notified of the issuance of this Settlement Agreement and Order. The U.S. EPA has also notified the Federal Natural Resource trustees of the

negotiations in this action pursuant to the requirements of Section 122(j) of CERCLA.

4. U.S. EPA and Respondents recognize that this Settlement Agreement and Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement and Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement and Order, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement and Order. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and Order and further agree that they will not contest the basis or validity of this Settlement Agreement and Order or its terms, except as stated in this paragraph 4.

II. PARTIES BOUND

5. This Settlement Agreement and Order applies to and is binding upon U.S. EPA and upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement Agreement and Order. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement and Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement and Order, the remaining Respondents shall complete all such requirements and shall be entitled to seek recovery or bring any other action allowed by law or pursuant to separate agreement among the Respondents regarding their participation in this Settlement Agreement and Order against those Respondents who fail to comply with the Settlement Agreement and Order for any reason, notwithstanding the contribution protection provision in Section XVI, paragraph 63, of this Settlement Agreement and Order.

6. Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Settlement Agreement and Order. Respondents shall be responsible for any noncompliance with their obligations under this Settlement Agreement and Order.

III. STATEMENT OF PURPOSE

7. In entering into this Settlement Agreement and Order, the objectives of U.S. EPA and the Respondents are: (a) to determine the nature and extent of contamination and any threat to the

public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the industrial park portion of the Site by performance of a remedial investigation as more specifically set forth in the Statement of Work ("SOW") attached as Attachment A to this Settlement Agreement and Order; and (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the industrial park portion of the Site, by preparation of a feasibility study as more specifically set forth in the SOW appended as Attachment C to this Settlement Agreement and Order. In addition, by entering into this Settlement Agreement and Order, Respondents also seek to resolve some or all of the State of Illinois claims in People of the State of Illinois v. Precision Brands, et al., No. 2003 CH 000979, in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, insofar as that action seeks further investigation of the conditions at the industrial park portion of the Site.

IV. FINDINGS OF FACT

8. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds, and, for purposes of enforceability of this Settlement Agreement and Order only, the Respondents stipulate that the factual statutory prerequisites under CERCLA necessary for entry of this Settlement Agreement and Order have been met. U.S. EPA's findings and this stipulation include the following:

- a. The industrial park portion of the Site is located in Downers Grove, Illinois. The approximate borders of the industrial park are Burlington Avenue on the north, Belmont Road on the east, Elmore and Inverness Avenues on the south, and I-355 on the west. St. Joseph's Creek runs through the northern end of the Site. The Site also includes areas to the south and east of the industrial park where groundwater contamination has come to be located. A map depicting the general location of the Site is appended as Attachment B.
- b. The industrial park portion of the Site was developed beginning in the early 1960s. Prior to that development, the property was used as farmland. The industrial park is now surrounded by residential development.
- c. Respondents are present or past owners and/or operators of industrial properties at the Site.
- d. Respondents have allegedly used solvents containing volatile organic compounds ("VOCs") in their plant operations or own properties where VOCs were allegedly used, and releases of

VOCs have been detected or are suspected at those properties.

- e. Soil and groundwater sampling results obtained during Site investigations by U.S. EPA and the Illinois Environmental Protection Agency ("IEPA") identified the presence of the VOCs trichloroethylene ("TCE"), tetrachloroethylene ("PCE") and 1,1,1-trichloroethane ("TCA") in soil and groundwater at the Site at levels of potential concern. Sampling data collected by IEPA also indicates that TCE, PCE and TCA contamination from the Site migrated to residential drinking water wells located to the south and east of the industrial park portion of the Site. These results are summarized in reports dated August 2002 and August 3, 2004, prepared for U.S. EPA by Weston Solutions, Inc.
- f. On August 8, 2003, a group of potentially responsible parties ("PRPs"), including many of the Respondents, entered a CERCLA settlement with U.S. EPA in the form of an Administrative Order on Consent. Under that settlement, certain of the PRPs (all of whom denied liability) agreed to repay loans to the Village of Downers Grove up to \$4.275 million to hook up approximately 800 residences to the south and east of the industrial park to a public drinking water supply.
- g. Concurrent with the signing of the August 8, 2003 Administrative Order on Consent, U.S. EPA and the PRPs entered into an Agreement in Principle ("AIP"). The AIP provides that, assuming continued cooperation from the Group through the OUI RA process (which will include consideration of the no further action alternative, among others), U.S. EPA staff will recommend forgiving its past costs as part of the final OUI settlement.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

- a. The Ellsworth Industrial Park Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. TCE, PCE and TCA are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondents are: (1) the "owners" and/or "operators" of portions of the Site, as defined by Section 101(20) of

CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1); and/or (2) the "owners" and/or "operators" of portions of the Site at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2);

- e. The presence of hazardous substances at the Site or the past, and present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened "releases" of hazardous substances from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
- f. The actions required by this Settlement Agreement and Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the National Contingency Plan ("NCP") and CERCLA.

VI. SETTLEMENT AGREEMENT AND ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that each Respondent shall comply with all of their obligations under this Settlement Agreement and Order, including but not limited to their obligations under all attachments to this Settlement Agreement and Order, and all documents incorporated by reference into this Settlement Agreement and Order.

1. Designation of Project Coordinator and Remedial Project Manager

10. Within 10 calendar days after the effective date of this Settlement Agreement and Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Settlement Agreement and Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA and IEPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA and IEPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement and Order shall constitute receipt by all Respondents.

11. The U.S. EPA has designated Mazin Enwiya of Remedial Response Section #2, Remedial Response Branch #1, Region 5, as its Remedial Project Manager ("RPM"). Respondents shall direct all submissions required by this Settlement Agreement and Order to the RPM along with the required copies in accordance with Section XIX (Submittals/Correspondence) in accordance with the provisions of this Settlement Agreement and Order. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

12. U.S. EPA and Respondents shall have the right, subject to the provisions of this section, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

2. Work to Be Performed

13. a. Respondents shall provide \$1,000,000 to U.S. EPA for performance by U.S. EPA of an RI/FS, development of RI and FS reports, and other deliverables consistent with the attached SOW and subject to the alternate provisions described in this paragraph. The funding shall be provided as described in detail in Section VIII of this Settlement Agreement and Order.

b. Using the funds provided by Respondents, U.S. EPA will expeditiously prepare a draft Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan as described in the SOW. Respondents may comment on those draft documents as provided in paragraph 15 below. Within 14 days of U.S. EPA's approval of the Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan Respondents may notify U.S. EPA in writing that they have elected to perform the remainder of the RI/FS in its entirety in accordance with the schedules in the RI/FS Work Plan and the SOW.

c. If the Respondents make a timely election to perform the remainder of the RI/FS, the supplemental provisions to this Settlement Agreement and Order contained in Appendix A ("Supplement") shall immediately take effect.

d. If the Respondents do not make a timely election to perform the remainder of the RI/FS, U.S. EPA will continue with its performance of the RI/FS as provided in this Settlement Agreement and Order.

14. Except as specifically noted in the SOW, this RI/FS is limited to the industrial park portion of the Site. Other areas of the Site and all areas where hazardous substances, pollutants or contaminants from the Site have migrated or have been come to be located, will be addressed in a subsequent RI/FS process. The performance of the RI/FS described in this Settlement Agreement and Order and all related activities shall be referred to as the "Work." The U.S. EPA will have its contractors use their best efforts, consistent with the terms of their contracts, to complete the RI field work described in the attached SOW by December 31, 2005.

15. U.S. EPA will provide to Respondents' Project Coordinator and to Illinois EPA copies of all draft and final plans, reports, and other deliverables developed for the RI/FS. Respondents will be provided with an opportunity to comment on all draft deliverables and U.S. EPA (in consultation with Illinois EPA) will consider all timely comments. Respondents shall also be provided an opportunity to participate in the TRIAD process that U.S. EPA is using to perform the OUI RI/FS, and U.S. EPA will also work with the Respondents to tailor the investigation of individual parcels to take into account reliable sampling data that has already been gathered

16. In developing the RI, U.S. EPA in coordination with the Respondents may also identify and evaluate potential interim response activities that may be implemented to reduce or eliminate human exposures to contamination at or from the industrial portion of the Site prior to completion of the RI. Such interim response activities may proceed under a separate order and/or agreement.

17. Any Respondent that owns any portion of the Site shall, at least 20 calendar days prior to the conveyance of any interest in real property at the Site, give written notice of this Settlement Agreement and Order to the transferee and written notice of the proposed conveyance to U.S. EPA and IEPA. The notice to U.S. EPA and IEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

2.1 Additional Work

18. In the event that one or more of the Respondents determines that additional work beyond the scope of the SOW is necessary to accomplish the objectives of the RI/FS, Respondent(s) may propose such additional work to U.S. EPA for approval.

2.2 Community Involvement and Technical Assistance Plan

19. U.S. EPA will prepare a Community Involvement Plan, in consultation with IEPA and in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information and conduct other activities as requested by U.S. EPA to support community relations programs. If a community group requests funding for technical assistance, U.S. EPA may in its discretion provide and administer up to \$50,000 of the funds paid by Respondents under this Settlement Agreement and Order to be used by selected qualified representatives of the community to hire independent technical advisors during the Work conducted pursuant to this Settlement Agreement and Order. U.S. EPA may also provide and administer any additional amounts needed if U.S. EPA, in its discretion, determines that the selected community group has demonstrated such a need (under the standards provided in 40 C.F.R. §35.4065) prior to U.S. EPA's issuance of the ROD based on the RI/FS conducted pursuant to this Settlement Agreement and Order. U.S. EPA will promptly notify Respondents if U.S. EPA selects representatives of the community to receive funds under this paragraph. Technical Assistance Plan (TAP) funds may not be used to support litigation activities and the Citizen's Advisory Group for the Site is not eligible to receive funding under the TAP.

3. Access to Property and Information

20. a. At reasonable times and after appropriate notice, Respondents shall provide access to all portions of the Site and all off-site areas to which access is necessary to implement this Settlement Agreement and Order that are owned or controlled by any Respondent. Such access shall be provided to U.S. EPA, IEPA, and their employees, contractors, agents, consultants, designees, and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas for which Respondents have ownership or control in order to conduct actions which U.S. EPA determines to be necessary, provided, however, that these individuals shall attempt to minimize interference with Respondents' business activities at the Site to the extent practicable. U.S. EPA will work in good faith with Respondents to accommodate Respondents' concerns regarding the timing and nature of Site access.

b. Respondents shall also provide access to all non-privileged records and documentation in their possession or control, or that of their contractors or agents, related to the conditions at the Site and the actions conducted pursuant to this Settlement Agreement and Order. Respondents shall submit to U.S. EPA and IEPA, upon receipt, the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Settlement Agreement and Order. It is the intention of the Respondents, and the understanding of U.S. EPA, that such

submissions shall not be a waiver of the attorney-work product privilege and, therefore, U.S. EPA and IEPA and their respective contractors shall not provide the data to third parties if a valid claim of privilege is asserted with respect to such data. Data developed by the Respondents and their contractor(s) if they elect to conduct the RI/FS under paragraph 13.b shall not be claimed as privileged. The requirements of this Paragraph 20.b shall terminate upon the approval by U.S. EPA of the RI Report under this Settlement Agreement and Order.

21. Where work or action under this Settlement Agreement and Order is to be performed in areas owned by or in possession of someone other than Respondents, U.S. EPA will be responsible for obtaining access. The costs of obtaining access may be funded from the payments made by Respondents under this Settlement Agreement and Order.

22. Respondents shall provide to U.S. EPA and the State, upon request, copies of all non-privileged documents and information within their possession or control or that of their agents relating to the Work. Respondents shall also make available to U.S. EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Prior to requesting any such access to individuals, U.S. EPA shall make reasonable efforts to secure such information from Respondents' Project Coordinator.

23. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA and the State under this Settlement Agreement and Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA and the State, or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

24. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege in lieu of providing documents, it shall provide U.S. EPA with the following information, to the extent that such information is not covered by the applicable privilege: 1) the title of the document, record, or information; 2) the date of the document, record, or information;

3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no sampling data developed during the time the RI/FS is underway and no documents, reports or other information required to be submitted pursuant to this Settlement Agreement and Order shall be withheld on the grounds that they are privileged.

4. Record Retention, Documentation, Availability of Information

25. Until six years after U.S. EPA's issuance of the final RI/FS Report for the industrial park portion of the Site, each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until six years after U.S. EPA's issuance of the final RI/FS Report for the industrial park portion of the Site, Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work. Any information that Respondents are required to provide or maintain pursuant to this Settlement Agreement and Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

26. At the conclusion of this document retention period, Respondents shall notify U.S. EPA and IEPA at least 90 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA or IEPA, Respondents shall deliver any such records or documents to U.S. EPA or the State. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide U.S. EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no sampling data developed during the time the RI/FS is underway and no documents, reports or other information required to be submitted pursuant to this Settlement Agreement and Order shall be withheld on the grounds that they are privileged.

27. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

5. Compliance With Other Laws

28. Respondents shall perform all activities required pursuant to this Settlement Agreement and Order in accordance with all the requirements of all federal and state laws and regulations. U.S. EPA has determined that the activities required by this Order are consistent with the NCP.

29. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the activities conducted entirely on-site.

30. This Settlement Agreement and Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VII. AUTHORITY OF THE U.S. EPA REMEDIAL PROJECT MANAGER

31. The RPM shall be responsible for overseeing the implementation of this Settlement Agreement and Order. The RPM shall have the authority vested in an RPM and an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any activities required by this Settlement Agreement and Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. PAYMENT OF RESPONSE COSTS

32. Respondents shall pay a total of \$1,000,000 to the EPA Hazardous Substance Superfund to fund the performance of the RI/FS and associated activities by U.S. EPA. The payment shall be made as follows: (a) by the earlier of August 15, 2005 or 15 days after the Effective Date of this Settlement Agreement and Order, Respondents shall pay \$60,000; (b) by 10 days after the deadline for the Respondents' election under paragraph 13 of this Settlement Agreement and Order, Respondents shall pay an additional \$500,000; and (c) by November 15, 2005, Respondents

shall establish an escrow account or other financial mechanism ("Escrow Account") to be approved by U.S. EPA through which U.S. EPA may withdraw, as U.S. EPA determines to be necessary, up to an additional \$440,000 to fund the performance of the RI/FS and associated activities by U.S. EPA. Notwithstanding any other provisions of this Section, if the Respondents make a timely election to perform the RI/FS pursuant to paragraph 13 of this Settlement Agreement and Order, Respondents shall only be obligated to finance the direct costs incurred in preparing and completing a draft Conceptual Site Model, data gap evaluation, project planning report and RI/FS Work Plan as described in the SOW.

33. The payments described in subparagraphs 32(a) and 32(b) shall be made into the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by U.S. EPA, and shall be accompanied by a statement identifying the names and addresses of the parties making payment, the Site name, the U.S. EPA Region 5 Site/Spill ID # 05B52A, and the docket number for this Settlement Agreement and Order. Respondents shall simultaneously transmit a notice of the payment to U.S. EPA in accordance with Section XIX (Submittals/Correspondence).

34. The total amount to be paid by Respondents under this Section and deposited in the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund and in the Escrow Account will be retained and used to finance the direct costs incurred in performing the RI/FS and related response actions at or in connection with the industrial park portion of Site. If any funds remain in the Special Account after all Work performed by U.S. EPA consistent with this Settlement Agreement and Order has been completed and paid for, those funds will be returned to the Respondents. To the extent that the payments made by Respondents under this Section are not sufficient to cover all of the costs of the RI/FS and related activities described in this Settlement Agreement and Order, U.S. EPA expects to complete those activities with funding obtained from the U.S. EPA Hazardous Substance Superfund. The Parties to this Settlement Agreement and Order recognize and acknowledge that use of funds from the U.S. EPA Hazardous Substance Superfund is subject to the availability and legal authorization for use of such funds. Nothing in this Settlement Agreement and Order shall be interpreted or construed as a commitment or requirement that U.S. EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. The Respondents shall have no liability under this Settlement Agreement and Order for the payment of costs of the performance of the Work required by this Settlement Agreement and Order beyond the payments specified in paragraph 32. In the

event the payments in paragraph 32 are insufficient to pay all of the costs of performing the RI/FS and related activities required by this Settlement Agreement and Order, (a) such incremental response costs shall be included as costs subject to the provisions of the AIP referenced in paragraph 8(g) above; and (b) consistent with the AIP, U.S. EPA intends to seek to recover any such incremental response costs from other PRPs before pursuing the Respondents for those response costs.

35. In the event that any payment is not made within the deadlines described above, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date the Respondents' payment is due. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

IX. DISPUTE RESOLUTION

36. Unless otherwise expressly provided for in this Settlement Agreement and Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement and Order. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement and Order expeditiously and informally. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement and Order.

37. Respondents may dispute or object to Work performed by U.S. EPA at the Site only if they contend such Work is clearly inconsistent with or beyond the scope of the SOW. If the Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement and Order, the Respondents shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely. U.S. EPA shall submit its Statement of Position, including supporting documentation, within 15 business days of receipt of the written notice of dispute. In the event that these time periods for exchange of written documents may cause a delay in the Work, they shall be shortened upon, and in accordance with, notice by U.S. EPA.

38. U.S. EPA and Respondents shall within 15 calendar days of U.S. EPA's receipt of the Respondents' Statement of Position, attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period of 15 calendar days may be extended at the sole discretion of U.S. EPA. U.S. EPA's decision regarding an extension of the Negotiation Period shall not constitute a U.S. EPA action subject to dispute resolution or a final Agency action giving rise to judicial review.

39. Any agreement reached by the parties pursuant to this Section shall be in writing, signed by all parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Settlement Agreement and Order.

40. U.S. EPA shall maintain an administrative record of any formal dispute under this Section. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to paragraph 37. If the parties are unable to reach an agreement within the Negotiation Period, upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement and Order. The decision of U.S. EPA shall be incorporated into and become an enforceable element of this Settlement Agreement and Order upon Respondents' receipt of the decision regarding the dispute.

41. Respondents' obligations under this Settlement Agreement and Order shall not be tolled by submission of any objection for dispute resolution under this Section. Respondents' invocation of the dispute resolution provisions of this Settlement Agreement and Order shall not require U.S. EPA to cease or delay any Work it is performing related to the RI/FS. U.S. EPA may in its unreviewable discretion decide to cease or delay Work directly related to such a dispute. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill any of their obligations that were the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

X. FORCE MAJEURE

42. Respondents agree to perform all of their obligations under this Settlement Agreement and Order within the time limits established under this Settlement Agreement and Order, unless the performance is delayed or prevented by a force majeure. For purposes of this Settlement Agreement and Order, a force majeure is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which

delays or prevents performance of any obligation under this Settlement Agreement and Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to perform, increased cost of performance, or normal weather events.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement and Order, whether or not caused by a force majeure event, Respondents shall notify U.S. EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within 7 business days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay to the satisfaction of U.S. EPA.

44. If U.S. EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the Respondents' obligations under this Settlement Agreement and Order that are affected by the force majeure event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation that is not so affected. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a force majeure event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XI. STIPULATED AND STATUTORY PENALTIES

45. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Settlement Agreement and Order

specified below, unless excused under Section X, or modified by written agreement of the parties under Section XVIII:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For > 7 Days</u>
Failure to Meet any Scheduled Deadline in the Settlement Agreement and Order	\$250/Day	\$ 500/Day

46. Unless the failure to perform is excused or the timing for performance is otherwise modified by the parties, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement and Order.

47. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement and Order, U.S. EPA may give Respondents written notification of the failure and describe the noncompliance. U.S. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding paragraphs regardless of whether U.S. EPA has notified Respondents of a violation. Penalties accrue and are assessed per violation per day.

48. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XIV (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Stipulated Penalties - Ellsworth Industrial Park Site" and shall reference the payers' name and address, the U.S. EPA site identification number (05B52A), and the docket number of this Settlement Agreement and Order.

49. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of all requirements of this Settlement Agreement and Order.

50. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision determining that payment is due.

51. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to paragraph 47. Nothing in this Settlement Agreement and Order shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement and Order, including, but not limited to, penalties pursuant to Sections 122(1) and 109 of CERCLA, 42 U.S.C. §§ 9622(1) and 9609, and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that, U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(1) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement and Order. Should Respondents violate this Settlement Agreement and Order or any portion hereof, U.S. EPA may carry out all or part of the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §§ 9604. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement and Order.

XII. RESERVATION OF RIGHTS

52. Except as specifically provided in this Settlement Agreement and Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or oil or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement and Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

U.S. EPA reserves its rights in regard to claims, prior actions, orders, or agreements with Respondents. The covenant not to sue by U.S. EPA set forth in Section XIV does not pertain to any matters other than those expressly identified therein. The United States and U.S. EPA reserve, and this Settlement Agreement and Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to:

a. liability for failure of Respondents to meet a requirement of this Settlement Agreement and Order;

b. liability for response costs incurred or to be incurred for response actions that are outside the scope of this Settlement Agreement and Order;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, excluding work performed under the terms of this Settlement Agreement and Order;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XIII. OTHER CLAIMS

53. By issuance of this Settlement Agreement and Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Settlement Agreement and Order.

54. Except as expressly provided in Section XIV (Covenant Not To Sue), nothing in this Settlement Agreement and Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Settlement Agreement and Order, for any liability such person may

have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a). Nothing in this Settlement Agreement and Order is intended or shall be construed to diminish or impair the protections afforded to Respondents under the August 8, 2003, Administrative Order on Consent or the expectations of the parties set forth in the AIP.

55. No action or decision by U.S. EPA pursuant to this Settlement Agreement and Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

56. For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon issuance of this Settlement Agreement and Order for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

XIV. COVENANT NOT TO SUE BY U.S. EPA

57. Except as reserved in Section XII of this Settlement Agreement and Order, in consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement and Order, and except as otherwise specifically provided in this Settlement Agreement and Order, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work to the extent such Work is funded by the Respondents under this Settlement Agreement and Order. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement and Order, including, but not limited to, payment of Response Costs pursuant to Section VIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

XV. COVENANT NOT TO SUE BY RESPONDENTS

58. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, RI/FS Response Costs expended by U.S. EPA, or this Settlement Agreement and Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA,

42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which Response Costs have or will be incurred, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Response Costs within the Scope of this Settlement Agreement and Order.

59. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 52 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

60. The Respondents reserve, and this Settlement Agreement and Order is without prejudice to, their potential claims against the United States for intentional or willful torts committed by any employee of the United States while acting within the scope of their office or employment, to the extent such claims are otherwise allowed by any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Respondents' reservation does not include any claim based on U.S. EPA's selection of response actions, or U.S. EPA's oversight or approval of the Work. The Respondents reserve whatever rights they may have to pursue potential claims against U.S. EPA's contractors for acts or omissions in performing the Work under this Settlement Agreement and Order.

61. Nothing in this Settlement Agreement and Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

62. Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of response actions under this Settlement Agreement and Order in any way affected the basis for listing the Site.

XVI. CONTRIBUTION RIGHTS AND PROTECTIONS

63. The Parties agree that this Settlement Agreement and Order constitutes an administrative settlement for purposes of Section

113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement and Order. The "matters addressed" in this Settlement Agreement and Order are the Work required under this Settlement Agreement and Order to the extent such Work is funded by the Respondents.

The Parties agree that this Settlement Agreement and Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the United States for the Work to the extent such Work is funded by the Respondents. As discussed in Paragraph 8.f, Section IV (Findings of Fact), certain Respondents entered an Administrative Order on Consent with EPA on August 8, 2003, which also constituted an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

Except as provided in Section XXI (Covenant Not to Sue by Respondent), nothing in this Settlement Agreement and Order precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not a party to this Settlement Agreement and Order for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons. Nothing in this Settlement Agreement and Order precludes Respondents from asserting any claims, causes of action, or demands against any Respondents who fail to comply with this Settlement Agreement and Order for any reason, or any action allowed by separate agreement among the Respondents regarding their participation in this Settlement Agreement and Order.

XVII. INDEMNIFICATION

64. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out their obligations pursuant to this Settlement Agreement and Order.

In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of

Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement and Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement and Order. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Respondents shall not be held out as a party to any contract entered into by or on behalf of the U.S. EPA in carrying out activities pursuant to this Settlement Agreement and Order. Respondents shall not be considered an agent of the U.S. EPA's contractor(s).

65. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

66. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of activities related to this Settlement Agreement and Order. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of activities related to this Settlement Agreement and Order.

XVIII. MODIFICATIONS

67. If any party believes modifications to any plan or schedule are necessary during the course of this project, they shall conduct informal discussions regarding such modifications with the other parties. Any agreed-upon modifications to any plan or schedule shall be memorialized in writing within 10 calendar days; however, the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Settlement Agreement and Order may be modified in writing by mutual agreement of the parties. Any modification to this Settlement Agreement and Order shall be incorporated into and made an enforceable part of this Settlement Agreement and Order.

68. If Respondents seek permission to deviate from any approved schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval (in consultation with IEPA) outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to paragraph 67.

69. No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Settlement Agreement and Order, and to comply with all requirements of this Settlement Agreement and Order unless it is formally modified.

XIX. SUBMITTALS/CORRESPONDENCE

70. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement and Order, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile in accordance with this section.

71. Correspondence and communications from U.S. EPA and IEPA shall be addressed to:

[insert names]

Three copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Mazin Enwiya
Remedial Project Manager
United States Environmental Protection Agency
77 West Jackson Blvd., Mailcode SR-6J
Chicago, Illinois 60604-3590
Phone (312) 353-8414
FAX (312) 353-8426
Email "enwiya.mazin@epa.gov"

Two copies of all correspondence, communication, and submittals from Respondents shall be directed to the following, and additional copies to other individuals he may identify:

Fred W. Nika, Jr.
Remedial Project Manager
Illinois Environmental Protection Agency
Division of Remediation Management
1021 North Grand Avenue East
Springfield, Illinois 62702
Phone (217) 782-3983
FAX (217) 782-3258
E-mail "Fred.Nika@epa.state.il.us"

One copy of all correspondence, communication, and submittals from Respondents shall be directed to:

Thomas Krueger
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 60604-3590
Phone (312) 886-0562
FAX (312) 886-0747
E-mail "krueger.thomas@epa.gov"

XX. SEVERABILITY

72. If a court of competent jurisdiction issues an order that invalidates any provision of this Settlement Agreement and Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement and Order, Respondents shall remain bound to comply with all provisions of this Settlement Agreement and Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXI. FINANCIAL ASSURANCE AND INSURANCE

73. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to U.S. EPA, funded sufficiently to perform the Respondents' payment obligations under this Settlement Agreement and Order.

74. Within 15 days after the effective date of this Settlement Agreement and Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the payment obligations required under this Settlement Agreement and Order.

75. If at any time the net worth of the financial instrument or trust account is insufficient to perform the remaining payment obligations under the Settlement Agreement and Order, Respondents shall provide written notice to U.S. EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

76. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by U.S. EPA, provided that U.S. EPA determines

that the new form of assurance meets the requirements of this Section.

77. For the duration of this Settlement Agreement and Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of the Respondents, in furtherance of this Settlement Agreement and Order. U.S. EPA shall also require that each of its contractors and their subcontractors name each of the Respondents as additional insureds on their insurance policies covering the Work to be performed under this Settlement Agreement and Order.

XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

78. This Settlement Agreement and Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5. For the purposes of this Order, the term "day" shall mean a calendar day. In computing any period of time under this and Order, where the last day of the period would fall on a Saturday or Sunday, the period shall run until noon, Central Time of the following Monday.

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 22nd day of August, 2005.

By [Signature]
For Ames Supply Company

By _____

By _____

IT IS SO AGREED AND ORDERED

BY: _____

DATE: _____

Richard C. Karl, Director

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 23rd day of August, 2005.By Arrow Gear Co.By JAMES E. FIELSTICKER, EX. V.P.By Sam Pittman

IT IS SO AGREED AND ORDERED

BY: _____

DATE: _____

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 23 day of August, 2005.

Brian Cean

By

John Stutts /cc

By

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency

DATE:

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IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 17th day of Aug, 2005.

By

[Signature]
CHASE-BELMONT PROP.

By

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

DATE:

RECEIVED

AUG 22 2005

KARAGANIS, WHITE & MAGEL LTD.

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 25th day of August, 2005.

By Fresh Pond Piping Systems Inc

By Robert H. Krause, President

By

IT IS SO AGREED AND ORDERED

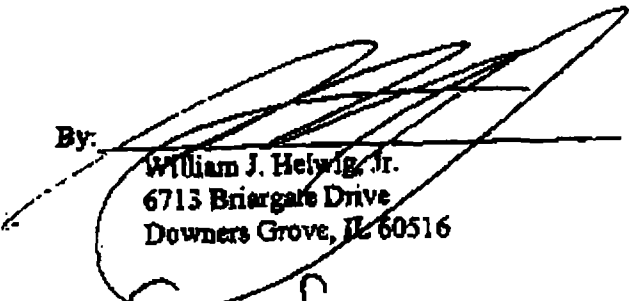
BY: _____ DATE: _____
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency

Administrative Settlement
Agreement and Order

WILLIAM J. HELWIG


Dated: 8-29-05

By:


William J. Helwig, Jr.
6713 Briargate Drive
Downers Grove, IL 60516

Designated Representative:

By:


Eric L. Samore
O'Hagen, Smith & Amundsen, L.L.C.
150 N. Michigan Avenue, Suite 3300
Chicago, IL 60601
(312) 894-3200

By:


Downers Grove National Bank
As Trustee under Trust 85-77

This statement is signed by Downers Grove National Bank, not individually, but solely as Trustee under Trust Agreement mentioned in said document. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this document shall be payable only out of any Trust property which may be held hereunder. Except that no duty shall rest upon Downers Grove National Bank, individually, or as Trustee, to incur any of the expenses, costs, or proceeds of any suit brought in said Trust. Said Trustee shall not be personally liable or performance of any of the terms and conditions of this document or for the duty or condition of the line of said property for any agreement with respect thereto. Any and all personal liability of the Downers Grove Bank is hereby expressly waived by the parties herein and their respective heirs, executors and assigns. As witness hereunto, the undersigned and authorized officers of each bank and Trust of the Trustee's bank have duly and shall not in any way be considered the responsibility and liability of Downers Grove National Bank. The Trustee's executory duties shall be continuing in the event of control of same passed by the documents executed by Downers Grove National Bank, as Trustee.

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 18th day of August, 2005.

Lindy Manufacturing Company, Inc.

By David A. Collins

By

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

DATE:

29

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNSIDE GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 26th day of August, 2005.

By Andrew R. Buring Vice Pres.
Lovejoy, Inc.

By _____

By _____

IT IS SO AGREED AND ORDERED

Aug. 22, 2005 4:32PM

No. 1835 P. 2

26

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 22 day of Aug, 2005.

By

Richard Lanz
Executive Vice President
RICHARD LANZ

By

MAGSE

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

DATE:

THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 17 day of August, 2005.

By The Morey Corporation

By Dana Morey

By

IT IS SO AGREED AND ORDERED

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

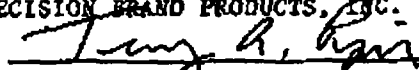
SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 19TH day of AUGUST, 2005.

PRECISION BRAND PRODUCTS, INC.

By



Terry A. Pizer
Chairman, President/CEO

By _____

By _____

IT IS SO AGREED AND ORDERED

BY: _____

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency

DATE: _____

Privileged and Confidential
Joint Defense Privilege

Draft 2005 Participation Agreement
August 23, 2005

Dated: May 26, 2005

PRINCIPAL MANUFACTURING CORPORATION

Dated: 9/6/05

By: 

Paul A. Balsett, President
Principal Manufacturing Corporation
2800 S. 19th Avenue
Broadview, IL 60153

Designated Representative:

Jeremiah P. Connolly, Esq.
BOLLINGER, RUSSELL & GARVEY
Citicorp Center
Suite 2300
500 W. Madison Street
Chicago, Illinois 60661
(312) 466-8000

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 22nd day of August, 2005.

By Mark Blat
Counsel for Rexnord Industries, Inc.

By _____

By _____

IT IS SO AGREED AND ORDERED

BY: _____
Superfund Division
Protection Agency

DATE: _____

Richard C. Karl, Director
United States Environmental

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 29th day of August, 2005.

RHI Holdings, Inc.
By Donald E. Miller
Vice President

By _____

By _____

IT IS SO AGREED AND ORDERED

BY: _____
Superfund Division
Protection Agency
Region 5

DATE: _____

Richard C. Karl, Director
United States Environmental

25

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATURES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 23 day of AUGUST, 2005.

By

John M. Choi
VP - FINANCE / TREASURER
SEBT INCORPORATED

By

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

DATE:

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 31st day of August, 2005.

By

John P. Chialli
Vice President - International Operations
SILICON

By

By

IT IS SO AGREED AND ORDERED

BY:

Richard C. Karl, Director
Superfund Division
States Environmental Protection Agency

DATE:

United

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 22nd day of AUGUST, 2005.

By Richard C. Mann
FOR WHITE LAKE BUILDING CORP

By _____

By _____

IT IS SO AGREED AND ORDERED

BY: _____

DATE: _____

Richard C. Karl, Director

IN THE MATTER OF:

ELLSWORTH INDUSTRIAL PARK SITE, DOWNERS GROVE, IL

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Settlement Agreement and Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this _____ day of _____, 2005.

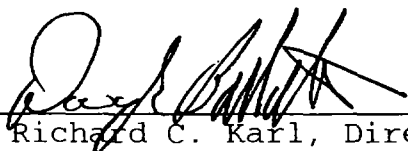
By _____

By _____

By _____

IT IS SO AGREED AND ORDERED

BY:



for Richard C. Karl, Director
Superfund Division

United States Environmental Protection Agency
Region 5

DATE:

9/29/05

ATTACHMENT A

Ames Supply Company
Arrow Gear Co.
Bison Gear
Chase Belmont Properties
Fusibond Piping Systems, Inc.
William J. Helwig (and related Trust 85-77)
Lindy Manufacturing Company, Inc.
Lovejoy, Inc.
Magnetrol
The Morey Corporation
Precision Brand Products, Inc.
Principal Manufacturing Corporation
Rexnord Industries, Inc.
RHI Holdings, Inc.
Scott Incorporated
Tricon
White Lake Building Corp

ATTACHMENT B



SOURCE: U.S.G.S. 7.5 MINUTE TOPOGRAPHIC MAPS.
WHEATON, ILLINOIS QUADRANGLE.

FIGURE 1-1

RESPONSE ACTION CONTRACT

U.S. EPA CONTRACT No. 68-W7-0026
WORK ASSIGNMENT No. 233-RIC0-B51W
DOCUMENT CONTROL No. RFW233-2A-AQL0

SITE LOCATION MAP

ELLSWORTH INDUSTRIAL PARK SITE

Downers Grove, Illinois

APPENDIX A

SUPPLEMENTAL PROVISIONS FOR IMPLEMENTATION OF RI/FS BY RESPONDENTS

1. The definition of "Work" under the Settlement Agreement and Order shall be changed to: "The performance of the RI/FS described in this Settlement Agreement and Order and all related activities."
 2. Existing Paragraphs 10-17, 21, 34, 37, 41, 45, 46, 57, 60, 73-75 and 77 of the Settlement Agreement and Order no longer apply and are replaced as described below.
 3. The following additions and revisions to the Settlement Agreement and Order take effect immediately upon the Respondents' determination under Paragraph 13 that they will perform the RI/FS:
 - A. Paragraphs 10-12 of the Settlement Agreement and Order are replaced with the following:**
 1. Designation of Contractors, Project Coordinator and Remedial Project Manager
10. All Work performed under this Settlement Agreement and Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Settlement Agreement and Order, and before the work outlined below begins, the Respondents shall notify U.S. EPA and IEPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such work. With respect to any proposed contractor, the Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. U.S. EPA retains the right to disapprove of the persons undertaking the work for Respondents. If U.S. EPA disapproves in writing a selected contractor, subcontractor, consultant or laboratory, Respondents shall retain replacement(s) and shall notify U.S. EPA and IEPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s), U.S. EPA reserves the right to

terminate this Settlement Agreement and Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify U.S. EPA and IEPA in writing of any changes or additions in the contractors, subcontractors, consultants or laboratories used to carry out such work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

11. A. Within 10 calendar days after the effective date of this Settlement Agreement and Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Settlement Agreement and Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA and IEPA. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 14 calendar days following U.S. EPA's disapproval and shall notify U.S. EPA and IEPA of that person's name and qualifications within 14 calendar days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement and Order shall constitute receipt by all Respondents.

B. The U.S. EPA has designated Ross delRosario of the Remedial Response Branch, Region 5, as its Remedial Project Manager ("RPM"). Respondents shall direct all submissions required by this Settlement Agreement and Order to the RPM along with the required copies in accordance with Section XIX (Submittals/Correspondence) in accordance with the approved schedule under this Settlement Agreement and Order. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of RI and FS Reports, and any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement and Order, including the SOW.

12. U.S. EPA and Respondents shall have the right, subject to the provisions of this section, to change their designated RPM or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice within 4 calendar days of oral notification.

A. Paragraphs 13-17 of the Settlement Agreement and Order are replaced with the following:

2. Work to Be Performed

13. Respondents shall develop and submit to U.S. EPA and IEPA an RI report, an FS report, and all other deliverables in accordance with the attached Statement of Work ("SOW"). The SOW is incorporated into and made an enforceable part of this Settlement Agreement and Order. All deliverables shall be prepared in accordance with the provisions of this Settlement Agreement and Order, the SOW, CERCLA, the NCP, U.S. EPA guidance related to remedial investigations and feasibility studies including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05), Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A), Interim Final (EPA-540-1-89-002), OSWER Directive 9285.7-01A, December 1, 1989; and Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), Interim, (EPA 540-R-97-033), OSWER Directive 9285.7-01D, January 1998, guidances referenced in the SOW, and any RI/FS related guidance subsequently issued by U.S. EPA. In the RI and FS Reports, Respondents shall address the factors required to be taken into account in Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430 of the NCP, 40 C.F.R. § 300.430.

13a. Except as specifically noted in the SOW, this RI/FS is limited to the industrial park portion of the Site. All other areas of the Site and all areas where hazardous substances, pollutants or contaminants from the Site have migrated or have been come to be located, will be addressed in a subsequent RI/FS process.

13b. The RI shall characterize the geology and hydrogeology of the Site, determine the nature and extent of hazardous substances, pollutants or contaminants at or from the Site, and characterize all ecological zones including terrestrial, riparian, wetlands, aquatic/marine, and transitional. Respondents shall prepare, for inclusion with the RI Report, a determination of the nature and extent of the current and potential threat to the public health or welfare or the environment posed by the release or threatened release of any hazardous substances, pollutants, or contaminants at or from the Site, including a "Human Health Risk Assessment" and "Ecological Risk Assessment".

13c. In the FS Report, Respondents shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action that protect human health and the environment

by recycling waste or by eliminating, reducing and/or controlling risks posed through each pathway at the Site. In the FS Report, the Respondents shall evaluate a range of alternatives including but not limited to those alternatives described in 40 C.F.R. § 300.430(e) and remedial alternatives that utilize permanent solutions and alternative treatment technologies or resource recovery technologies. The FS Reports shall include a detailed analysis of individual alternatives against each of the nine evaluation criteria in 40 C.F.R. § 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against the nine criteria in 40 C.F.R. § 300.430(e)(9)(iii).

13d. Respondents shall submit to U.S. EPA and Illinois EPA copies of all plans, reports, submittals and other deliverables required under this Settlement Agreement and Order, the SOW and the RI/FS Planning Documents in accordance with the approved schedule for review and approval pursuant to Section VI.2.F of this Settlement Agreement and Order (U.S. EPA Approval of Plans and Other Submissions). Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of RI and FS Reports, and any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement and Order, including the SOW. Upon approval by U.S. EPA, all deliverables under this Settlement Agreement and Order, including the SOW, shall be incorporated into and become enforceable under this Settlement Agreement and Order.

13e. The Work conducted under this Settlement Agreement and Order is subject to approval by U.S. EPA (in consultation with IEPA) and shall provide all appropriate and necessary information to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP").

2.A RI/FS Work Plan

14. Respondents shall implement the approved RI/FS work plan and sampling and analysis plan.

14a. As a supplement to the RI/FS work plan, the Respondents shall submit for U.S. EPA review and comment (in consultation with IEPA) a plan that ensures the protection of the public health and safety during performance of work under this Settlement Agreement and Order. The plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910 and shall be prepared in accordance with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992 or subsequently issued guidance). If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and

implement the plan during the pendency of the RI/FS.

14b. Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with, at a minimum, OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

14c. Upon request by U.S. EPA, Respondents shall allow U.S. EPA, IEPA, or their authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Settlement Agreement and Order. Respondents shall notify U.S. EPA and IEPA not less than 7 working days in advance of any sample collection activity. U.S. EPA and IEPA shall have the right to take any additional samples that they deem necessary.

2.B RI Report

15. The RI Report will be developed in two primary phases: the Site Characterization Technical Memorandum and the Risk Assessment Technical Memorandum.

2.B.1 Site Characterization Technical Memorandum

15a. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Site Characterization Technical Memorandum, in accordance with the schedule contained in the SOW. The Site Characterization Technical Memorandum shall present the results of the site characterization activities as described in the SOW.

2.B.2 Risk Assessment Technical Memorandum

15b. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Risk Assessment Technical Memorandum, in accordance with the schedule contained in the SOW. The Risk Assessment Technical Memorandum shall evaluate both ecological risks and human health risks and shall present the results of the Risk Assessment activities as described in the SOW.

2.B.3 Final RI Report

15c. Within 30 calendar days after approval of the Risk Assessment Technical Memorandum, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft RI Report that is consistent with this Settlement Agreement and Order and the SOW.

15d. The draft RI report and all revisions thereto shall include

the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

2.B.4 Interim Actions

15e. In developing the RI, to the extent possible, Respondents shall also identify and evaluate potential interim response activities that may be implemented to reduce or eliminate human exposures to contamination at or from the industrial portion of the Site prior to completion of the RI. Such response activities shall be discussed in the Phase II Technical Memorandum, and Respondents may propose to implement such activities pursuant to section VI.2.E of this Settlement Agreement and Order.

2.C FS Report

16. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Settlement Agreement and Order and the SOW. The FS Report will be developed in three primary phases: the Remedial Action Objectives Technical Memorandum, the Alternatives Screening Technical Memorandum, and the Comparative Analysis of Alternatives Technical Memorandum.

2.C.1 Remedial Action Objectives Technical Memorandum

16a. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Remedial Action Objectives Technical Memorandum, in accordance with the schedule contained in the SOW. Based on the results of the approved RI Report, the Remedial Action Objectives Technical Memorandum shall identify the constituents and media of concern, the actual and potential exposure pathways and receptors, and the appropriate cleanup objectives for the identified media and pathways.

2.C.2 Alternatives Screening Technical Memorandum

16b. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) an Alternatives Screening Technical Memorandum, in accordance with the schedule contained in the SOW. The Alternatives Screening Technical Memorandum shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. Respondents shall summarize the development and screening of remedial alternatives, and include an alternatives array document as described in the SOW.

2.C.3 Comparative Analysis of Alternatives Technical Memorandum

16c. Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a Comparative Analysis of Alternatives Technical Memorandum, in accordance with the schedule contained in the SOW. The Comparative Analysis of Alternatives Technical Memorandum shall summarize the results of the comparative analysis performed between the remedial alternatives and present the results of all treatability studies performed, as described in the SOW.

2.C.4 Final FS Report

16d. Within 21 calendar days after approval of the Comparative Analysis of Alternatives Technical Memorandum, the Respondents shall submit to U.S. EPA for approval (with a copy to IEPA) a draft FS Report that is consistent with this Settlement Agreement and Order and the SOW.

16e. The draft FS report and all revisions thereto shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this Report, the information submitted is true, accurate, and complete.

16f. Respondents shall not commence or undertake any remedial actions at the Site without prior U.S. EPA approval.

2.D Reporting

17. Respondents shall submit a monthly written progress report to U.S. EPA and IEPA concerning actions undertaken pursuant to this Settlement Agreement and Order, beginning 30 calendar days after the effective date of this Settlement Agreement and Order, until termination of this Settlement Agreement and Order, unless otherwise directed in writing by the RPM. These reports shall: (1) describe all significant developments during the preceding period, including the work performed and any problems encountered; (2) provide all analytical data received during the reporting period; (3) describe all developments anticipated during the next reporting period, including a schedule of work to be performed; and (4) describe all anticipated problems and planned resolutions of past or anticipated problems.

17a. Respondents shall make presentations at, and participate in, meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion (in consultation with IEPA and the

Respondents).

17b. Any Respondent that owns any portion of the Site shall, at least 20 calendar days prior to the conveyance of any interest in real property at the Site, give written notice of this Settlement Agreement and Order to the transferee and written notice of the proposed conveyance to U.S. EPA and IEPA. The notice to U.S. EPA and IEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section VI.3. (Access to Property and Information).

2.E Additional Work

17c. In the event that the U.S. EPA or the Respondents determine that additional work is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to the other parties in writing. Any additional work which Respondents determine to be necessary shall be subject to U.S. EPA's written approval (in consultation with IEPA) prior to commencement of the additional work. Respondents shall complete, in accordance with standards, specifications, and schedules U.S. EPA has approved, any additional work Respondents have proposed, and which U.S. EPA has approved in writing or that U.S. EPA has determined to be necessary, and has provided written notice of pursuant to this paragraph. Subject to Dispute Resolution as provided in Section IX, Respondents shall implement the additional tasks that U.S. EPA determines are necessary.

2.F U.S. EPA Approval of Plans and other Submissions

17d. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement and Order, including the SOW, U.S. EPA (in consultation with IEPA) shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

17e. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Subparagraph 17d(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section IX with respect to the modifications or conditions made by U.S. EPA. Following U.S. EPA approval or modification of a submittal or portion thereof,

Respondents shall not thereafter alter or amend such submittal or portion thereof unless directed by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 17d(c) and the submission had a material defect, U.S. EPA retains the right to seek stipulated penalties, as provided in Section XI. U.S. EPA also retains the right to perform its own studies, complete the RI/FS (or any portion of the RI/FS), and seek reimbursement from Respondents for its costs; and/or seek any other appropriate relief.

17f. Resubmission of Plans.

a. Upon receipt of a notice of disapproval or required modifications, Respondents shall, within 21 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XI, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 17g and 17h.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the relevant submission. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XI.

c. For all remaining deliverables not enumerated above in Sections 2.A-2.C and 2.E, Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

17g. If U.S. EPA disapproves a resubmitted plan, report or other item, or portion thereof, U.S. EPA may direct Respondents to correct the deficiencies and specify the date by which the corrections must be submitted. U.S. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any such plan, report, or item as corrected, modified or developed by U.S. EPA, subject only to their right to invoke the dispute resolution procedures set forth in Section IX. In the event of U.S. EPA disapproval of a revised submittal, Respondents may be deemed in violation of this Settlement Agreement and Order. If Respondents are deemed in violation of this Settlement Agreement and Order, U.S. EPA retains the right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; to terminate this Settlement Agreement and Order;

and/or seek any other appropriate relief.

17h. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section IX and U.S. EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by U.S. EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section IX and XI shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section IX, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XI.

17i. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final reports.

17j. All plans, reports, and other items submitted to U.S. EPA under this Settlement Agreement and Order shall, upon approval or modification by U.S. EPA, be incorporated into and enforceable under this Settlement Agreement and Order. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Settlement Agreement and Order, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement and Order.

17k. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to U.S. EPA.

B. Paragraph 21 of the Settlement Agreement and Order is replaced with the following:

21. Where work or action under this Settlement Agreement and Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 calendar days after the effective date of this Settlement Agreement and Order, or as otherwise specified in writing by the RPM. Respondents shall notify U.S. EPA within 4 calendar days if, after using their best efforts, they are unable to obtain

such agreements. Respondents shall describe in writing their efforts to obtain access. If Respondents cannot obtain access agreements, U.S. EPA may, in its discretion, obtain access for Respondents, perform those tasks or activities with U.S. EPA contractors, or terminate the Settlement Agreement and Order. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement and Order, Respondents shall perform all other activities not requiring access to that property, and shall reimburse U.S. EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables.

C. The following language will be added to Paragraph 29 of the Settlement Agreement and Order:

Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, the Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

D. Paragraphs 30a and 30b will be added to the Settlement Agreement and Order:

30a. Off-Site Shipments

i. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to U.S. EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

ii. Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

iii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Subparagraph 30a.ii and

30a.iv as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

iv. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

30b. Emergency Response and Notification of Releases

i. If any incident, or change in Site conditions, during the activities conducted pursuant to this Settlement Agreement and Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If Respondents fail to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs associated with that response.

ii. Respondents shall submit a written report to U.S. EPA and IEPA within 10 calendar days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

A. Paragraph 34 of the Settlement Agreement and Order is replaced with the following:

34a. Respondents shall pay all Oversight Costs of the United States related to the Site that are not inconsistent with the NCP. The obligation to pay Oversight Costs shall not take effect unless and until the Respondents elect to perform the RI/FS as provided in paragraph 13.b of the Settlement Agreement and Order. U.S. EPA will send Respondents a bill for Oversight Costs on an annual basis. The bill shall consist of an Itemized Costs Summary. "Oversight Costs" are all costs incurred and paid by

U.S. EPA after the date of Respondents' election to perform the RI/FS under paragraph 13.b of this Settlement Agreement and Order relating to this Settlement Agreement and Order, including, but not limited to direct and indirect costs related to overseeing work performed under this Settlement Agreement and Order, and reviewing or developing plans, reports and other items pursuant to this Settlement Agreement and Order.

34b. Respondents shall, within 45 calendar days of receipt of a bill from U.S. EPA, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting and Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Ellsworth Industrial Park Site" and shall reference the payor(')s(') name and address, the U.S. EPA site identification number B52A, and the docket number of this Settlement Agreement and Order.

34c. The total amount to be paid by Respondents under this Section shall be deposited in the Ellsworth Industrial Park Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

34d. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the RPM. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

A. Paragraph 37 of the Settlement Agreement and Order is replaced with the following:

37. If the Respondents object to any U.S. EPA action taken

pursuant to this Settlement Agreement and Order, including billings for response costs, the Respondents shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which the Respondents rely. U.S. EPA shall submit its Statement of Position, including supporting documentation, within 15 business days of receipt of the written notice of dispute. In the event that these time periods for exchange of written documents may cause a delay in the Work, they shall be shortened upon, and in accordance with, notice by U.S. EPA.

A. Paragraph 41 of the Settlement Agreement and Order is replaced with the following:

41. Respondents' obligations under this Settlement Agreement and Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. No U.S. EPA decision made pursuant to this Section shall constitute a final Agency action giving rise to judicial review.

A. Paragraphs 45 and 46 of the Settlement Agreement and Order are replaced with the following:

45. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth below for failure to comply with the Work requirements of this Settlement Agreement and Order specified below, unless excused under Section X, or modified by written agreement of the parties under Section XVIII:

<u>Deliverable/Activity</u>	<u>Penalty For Days 1-7</u>	<u>Penalty For > 7 Days</u>
Failure to Submit a Draft RI or FS Report	\$250/Day	\$750/Day

Failure to Submit a revised RI or FS Report	\$250/Day	\$750/Day
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Failure to Submit a Data Report or Technical Memorandum	\$250/Day	\$750/Day
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Late Submittal of Progress Reports or Other Miscellaneous Reports/Submittals	\$100/Day	\$ 400/Day
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Failure to Meet any Scheduled Deadline in the Settlement Agreement and Order	\$150/Day	\$ 400/Day
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46. Unless the failure to perform is excused or the timing for performance is otherwise modified by the parties, all penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VI.2 (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, U.S. EPA Region 5, under Section IX (Dispute Resolution), during the period, if any, beginning on the 21st day after the U.S. EPA submits its Statement of Position until the date that the Director of the Superfund Division, U.S. EPA Region 5, issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement and Order.

A. Paragraph 57 of the Settlement Agreement and Order is replaced with the following:

57. Except as reserved in Section XII of this Settlement Agreement and Order, in consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement and Order, and except as otherwise specifically provided in this Settlement Agreement and Order, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement

and Order, including, but not limited to, payment of Oversight Costs pursuant to Section VIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

A. Paragraph 60 of the Settlement Agreement and Order is replaced with the following:

60. The Respondents reserve, and this Settlement Agreement and Order is without prejudice to, their potential claims against the United States for intentional or willful torts committed by any employee of the United States while acting within the scope of their office or employment, to the extent such claims are otherwise allowed by any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Respondents' reservation does not include any claim based on U.S. EPA's selection of response actions, or U.S. EPA's oversight or approval of the Work.

A. Paragraph 69a will be added to the Settlement Agreement and Order:

69a. Notice of Completion. When U.S. EPA determines (in consultation with IEPA) that all work, including the RI and FS Reports, has been fully performed in accordance with this Settlement Agreement and Order, except for certain continuing obligations required by this Settlement Agreement and Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines (in consultation with IEPA) that any such Work has not been completed in accordance with this Settlement Agreement and Order, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Planning Documents or other work plan if appropriate in Settlement Agreement and Order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Planning Documents or other approved work plan and shall submit the required deliverable(s) in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified RI/FS Planning Documents or other work plan shall be a violation of this Settlement Agreement and Order.

A. Paragraph 73-75 of the Settlement Agreement and Order are replaced with the following:

73. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to U.S. EPA, funded sufficiently to perform the work and any other obligations required under this Settlement